

The Law Offices of
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April 4, 2023

The Honorable Ann M. Donnelly
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Douglass Mackey, Criminal Docket No. 21-0080 (AMD)

Dear Judge Donnelly:

Pursuant to discussion with the Court on March 31, 2023, I herewith file the attached letter which I emailed to the Court and the government that morning at 7:36 a.m. I also enclose my cover email. The Court's case manager advised me that day that the letter had been received by the Court and forwarded to Chambers.

Respectfully submitted,

/s/ Andrew J. Frisch
Andrew J. Frisch

Enclosures

cc: US Attorney's Office

Andrew Frisch

From: Andrew Frisch
Sent: Friday, March 31, 2023 7:36 AM
To: Donna Greene
Cc: Paulsen, Erik (USANYE); Gullotta, William (CRM); Buford, Turner (USANYE)
Subject: Mackey
Attachments: Letter to Judge Donnelly, March 31, 2023.pdf

Donna, good morning,

Attached is a letter for the Judge. I am reluctant to file it publicly right now lest it generate media coverage and certainly not without the Judge's preference.

Also, FYI I have scheduled an essential call in another matter for today's lunch hour, beginning at 1:00 p.m., though, needless to say, events may require that it be rescheduled.

Respectfully,

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March 31, 2023

The Honorable Ann M. Donnelly
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Douglass Mackey, Criminal Docket No. 21-0080 (AMD)

Dear Judge Donnelly:

Beginning yesterday afternoon and continuing this morning, the media has been saturated with coverage of the unprecedented indictment of former President Trump, his belligerent public response, and full-throated support for him from political allies. The reported indictment and attendant coverage follows more than three full days of the jury's deliberations in Mr. Mackey's case on a single charge on a cabined area of dispute, the jury's report that it "cannot reach a unanimous decision," and an *Allen* charge over defense objection.

It remains the view of the defense that the evidence in this case is legally insufficient. The government's short presentation included (1) a claim of conspiratorial agreement by an inherently unreliable witness whose anonymity was unnecessarily obtained by the government to secure his testimony; (2) the testimony of Jess Morales-Rocketto as a witness representing the presidential campaign of Hillary Clinton in 2016, first noticed on March 10, 2023, the Friday before jury selection, without disclosure of contradicting reports of other representatives of the campaign interviewed by the government between March 2021 and January 2023; and (3) Mr. Mackey's other noted claims of error.

But even if the evidence is legally sufficient and Mr. Mackey's claims of error are without traction, the government's theory of the case and its evidence are not so powerful as to withstand undue and irreparable prejudice to Mr. Mackey -- whose full-throated support of the former president in 2016 is inextricably intertwined in the government's evidence -- from coverage of his preferred candidate's indictment. On Mr. Mackey's behalf, I renew his motion for a mistrial.

Respectfully submitted,

/s/ Andrew J. Frisch
Andrew J. Frisch

cc: US Attorney's Office